

DATE: December 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16039

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of illegal drug involvement dating from his high school years to September 2000. He used cocaine during periods of extended leave while on active duty in the U.S. military, with increasing frequency after he began to solicit the services of prostitutes. After spending \$400 over two days on cocaine in June 1995, he began an involvement with spiritual-based recovery groups (primarily Alcoholics Anonymous) but struggled in a pattern of short-term abstinence followed by relapse. With the help of an AA sponsor, he remained drug-free from about May 1997 until August 2000 when, for a 20 or 30-day period into September, he went to strip clubs and used heroin as well as cocaine. He has abstained from illegal drugs since September 2000, but continues to struggle with the sexual addiction issues. Given his history of drug use in the context of sexual encounters with prostitutes, and drug relapse after abstaining for as long as 3.5 years, the risk of future drug use cannot be ruled out. Clearance is denied.

STATEMENT OF CASE

On May 24, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Drug Involvement (Guideline H).

On June 4, 2004, Applicant filed his response to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on September 7, 2004. Applicant having requested an expedited hearing, a notice was issued on September 9, 2004, scheduling the hearing for September 20, 2004. At the hearing held as scheduled, the Government submitted four documents, three of which were admitted into evidence. Applicant's case consisted of his testimony and six exhibits. A transcript of the hearing was received on October 4, 2004.

FINDINGS OF FACT

The SOR allegations concern Drug Involvement (Guideline H), specifically cocaine use from 1986 to at least September 10, 2000, including while he held a top-secret security clearance and despite attendance at Narcotics Anonymous meetings from summer 1995 to late 1996; purchase with consequent financial problems and sale of cocaine; conviction of possession of drug paraphernalia in 1996; heroin use in September 2000; marijuana use as a teen and once during the past 10 years; LSD use and purchase in about 1988; and hallucinogenic mushroom use in approximately 1988 as well. It was also alleged that Applicant had no intent to use any illegal drug in the future, including cocaine, as long as he stayed active in Alcoholics Anonymous (AA). Applicant admitted the allegations, adding that he was actively involved spiritual/Christian-based recovery groups. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 35-year-old systems engineer who is currently unemployed. He has been offered a position installing and upgrading information technology systems for the U.S. military contingent on favorable adjudication of his security clearance. Applicant is seeking a secret-level clearance.

Applicant began to use drugs as a teenager and to engage in sex with prostitutes. From ages 16 to 19, he had sex with prostitutes on about 15 occasions. He smoked marijuana 10 to 15 times but did not like the effects, so ceased his use with the exception of one additional occasion sometime during the 1992 to 2002 time frame. In about 1986, Applicant started using cocaine with friends. Over the next two years, he used cocaine three or four times, contributing \$10 each time toward its purchase. In the 1987/88 time frame, he also used LSD on five occasions, bought LSD once, and ingested hallucinogenic mushrooms once.

In March 1990, Applicant entered on active duty in the U.S. military. He was not candid about his illegal drug use on his enlistment papers. On his security clearance application completed in June 1990, Applicant indicated only that he had used marijuana three times in June 1987 with friends at high school graduation parties. Applicant was granted his top-secret security clearance in November 1990.

Aware cocaine remained in his system only for three days, Applicant used the drug when on extended leave, about four times total during his first four years in the service. Feeling guilty about his lack of candor with the military about his illegal drug involvement, Applicant provided details of his past drug use to his supervisor in 1992. His clearance was suspended in May 1992 but reinstated three or four months later.

In December 1994, Applicant learned that he would not have to pay for sex with prostitutes as long as he supplied the women with cocaine. During his last few months in the military, Applicant used cocaine 10 or 11 times, purchasing an "eight ball" (about 3.5 grams) for \$200. On occasion, he smoked the drug the night before reporting for duty.

In February 1995, Applicant was discharged honorably from active duty early as he had a more lucrative employment opportunity in the civilian sector. While employed for a defense firm (company A) as a systems engineer in computer programming with no need for a clearance, Applicant began to inject cocaine and less frequently heroin. Over the next 18 months, he abstained for brief periods (approximately four months) only to relapse into binge use of cocaine, occasionally smoking crack and later injecting cocaine. Applicant obtained cocaine from strippers and prostitutes, spending anywhere from \$50 for a "dime bag" to \$400 for an "eight ball." He also sold cocaine on occasion to friends and acquaintances with total sales of not more than \$250. He blacked out from overdosing on cocaine at least once. Applicant kept his sexual behaviors and drug use secret from his friends and family. His supervisor observed no evidence of any drug problem at work.

In June 1995, after spending \$400 over two days on illegal drugs, Applicant sought help through his then roommate, who put him in touch with a local church. At the suggestion of a fellow parishioner, Applicant began attending Narcotics Anonymous (NA). He was not actively working the steps and did not have a sponsor, and his pattern of short-term abstinence followed by relapse continued. Alcohol use led to illegal drug use (primarily cocaine but on occasions heroin⁽²⁾) and involvement with prostitutes. In July 1996, he was arrested for possession of drug paraphernalia for which he paid a fine of about \$50, and was placed on six months probation. His drug use caused him financial problems, and he filed for bankruptcy in February 1996. After going to 15 to 20 NA meetings, Applicant in December 1996 elected to continue with Alcoholics Anonymous (AA) instead as drinking led him to use drugs and those in the AA fellowship appeared to be more involved in their recovery. As he became involved in recovery groups, Applicant

disclosed his drug use to his family and his supervisor.

In 1997, Applicant got a sponsor in AA and he began to actively work the 12-step program. Despite his attendance at home group and other meetings two to three times weekly, Applicant used cocaine 10 times over two days in at least May 1997. With the help of AA, Applicant remained drug-free and celibate for about the next 3.5 years.

In August 1998, his job with company A was transferred to a new geographic locale. Applicant shared his history of substance abuse with his supervisor, a retired colonel. Applicant proved to be a dedicated worker with honesty and integrity in fulfillment of his duties. In late October 1999, his employment with company A ended. He returned to the state of his previous residency, and in January 2000 resumed his old job with company A under a supervisor who had observed his work from 1995 to 1998. That supervisor found Applicant to be dependable, morally sound, and trustworthy. Applicant discussed with him several times his past experiences with alcohol and drugs, portraying that period as an aberration caused by his youth and immaturity, but this supervisor had never seen Applicant use drugs or drink alcohol.

In July 2000, Applicant went to a massage parlor where he relapsed as to his sexual celibacy. Upset with himself, Applicant took a negative attitude toward his recovery and he stopped attending spiritual-based recovery groups. While on a visit to his home state in August 2000, Applicant socialized with an old friend, with whom he had used drugs in the past. Applicant ended up drinking alcohol and abusing cocaine about 10 times over a two-day period.

Over the next 20 to 30 days, Applicant used cocaine and heroin twice with cocaine and frequented strip clubs. On the evening of September 10, 2000, he was out with some members of the Mexican mafia and feared for his life. Faced with the choice of continuing down a path that might lead to his death or pursuing recovery through AA, Applicant chose the latter. He returned to AA the next day and later on also began attending once weekly a church-based men's recovery group for those struggling with sexual issues as AA did not deal with the sexual aspects of his recovery. As of September 2004, Applicant had not had another relapse. Once he stopped using drugs and alcohol, he found he was no longer acting out sexually, although he continued to fantasize about sex and occasionally viewed pornography.

In January 2001, Applicant began providing systems engineering services to company A as a self-employed consultant. In June 2001, he moved back to his home state where he took on odd jobs until November 2001, when he was again offered full-time employment with company A. Needing a security clearance for his duties, Applicant executed a security clearance application (SF 86) on August 22, 2002. Concerning any illegal drug involvement in the seven years preceding the application, Applicant disclosed use of cocaine 30 times from March 15, 1995 to December 30, 1996, and cocaine binges (10 times over a two-day period) in May 1997 and August 2000, and cocaine and heroin use 10 times over two days in September 2000. He reported he had used cocaine 10 times in 1994/1995 while possessing a security clearance. Adding that he had been a member of AA since 1996, Applicant acknowledged his relapses, including after 3.5 years of abstinence, but he had been sober since September 11, 2000, with the help of AA and his church.

On November 26, 2002, Applicant was interviewed by a special agent of the Defense Security Service. Applicant was candid about his involvement with illegal drugs and prostitutes. He denied any drug use after September 10, 2000, and any intent of future illicit drug use as long as he stayed active in AA. Applicant reported attending his AA home group meeting once weekly and on occasion one to two additional meetings. He was also going to church services and Bible studies twice a week.

In early April 2004, Applicant was offered a one-year position (with a possible extension) as a network systems engineer with a new employer subcontracting to provide network software installation services for the U.S. military. The contractor would have the option of hiring him as an employee for six months. Applicant's hire is contingent on him obtaining the requested security clearance. The position involves business travel two out of every three weeks, longer trips than with his previous job. When traveling for work in the past for more than a week or two (which was not frequent), Applicant attended an AA meeting in his temporary duty area on average every other business trip.

In May 2004, Applicant shared his experiences with sex, alcohol, and drugs with a men's group for those struggling with sexual and other addictions. He has also spoken to youth groups about the dangers of alcohol and illegal drugs. Applicant has completed the 12 steps in AA but understands it is an ongoing process. Applicant has not attended AA since July 2004, as the sexual aspects of his recovery were not being adequately addressed.

In September 2004, he moved in with his father in his home state while awaiting resolution of his clearance. In the last two weeks, he became involved in the area with a Christian recovery group based on the Bible that discusses struggles with sexual temptations. Applicant has not had any professional counseling for his sexual behaviors. The Christian recovery group with which Applicant is presently involved is led by Applicant's stepfather, who is an alcohol and drug counselor by profession. Applicant has been corresponding with those in his old men's group by electronic mail for support. He has had thoughts of using illegal drugs in the past four years but no cravings. For Applicant there is still the lure of going into a hotel room with movies of a sexual nature available on HBO.

Should Applicant be forced to relocate to a new area for his employment, he intends to initially seek out a church and a men's recovery group, or AA if no recovery group is available to be kept accountable for his actions. Applicant recognizes that to prevent a relapse, he needs someone in whom he can confide temptations of sex and/or drugs.

Those individuals who supervised Applicant's work for company A highly recommend him for a secret security clearance. They consider his drug use to be of the past.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Drug Involvement

The Concern:

a. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of

an unauthorized disclosure of classified information. (E2.A8.1.1.1.)

b. Drugs are defined as mood and behavior-altering substances, and include: (E2.A8.1.1.2.)

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) (E2.A8.1.1.2.1.), and

c. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (E2.A8.1.1.3)

Conditions that could raise a security concern and may be disqualifying include:

a. Any drug abuse (see above definition); (E2.A8.1.2.1.)

b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution. (E2.A8.1.2.2.)

Conditions that could mitigate security concerns include:

a. The drug involvement is not recent; (E2.A8.1.3.1.)

b. A demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the Government established its case with respect to Guideline H, Drug Involvement. Applicant has a history of illegal drug involvement that began in his teens, primarily cocaine but also including marijuana, LSD, hallucinogenic mushrooms in his teens, and more recently heroin. Applicant engaged the services of prostitutes, using cocaine with them, including during the last few months of his active duty in the U.S. military while he held a top-secret clearance. A cry for help in June 1995 led to his involvement in NA/AA and participation in a Christian men's recovery group, but he was not committed sufficiently to recovery, as evidenced by two years of subsequent binging on cocaine. In 1997, he got a sponsor in AA and began to work the 12-steps, with sought after abstinence from drugs and self-destructive sexual activity maintained for some 3.5 years. Although Applicant has never been diagnosed as addicted to alcohol, sex, or illegal drugs, he had developed a serious problem, as evidenced by his relapse into sexual activity in July 2000, and cocaine and heroin use in August/September 2000.

The improper or illegal involvement with drugs raises questions about an individual's willingness or ability to protect classified information. The risk of unauthorized disclosure is increased if there is impaired functioning due to the influence of a mood-altering substance. Disqualifying conditions a. (any drug abuse) and b. (illegal drug possession) are clearly pertinent in assessing Applicant's suitability for access to classified information.

Applicant's use of illegal drugs within the past seven years is limited to a 20 to 30 day relapse four years ago, so it is not recent (*see* mitigating condition a.). Also in his favor, Applicant intends no future involvement with illegal drugs (*see* MC c., above), and he has actively pursued recovery through AA and solely of late through a Christian men's recovery group. Yet, even with his AA affiliation over the 1997 to 2000 time frame, which included attending meetings regularly, working the 12-step program with the help of a sponsor, and sharing his experiences with others in recovery, he was unable to resist sexual temptation in July 2000. Instead of renewing his commitment to abstaining from self-destructive activity, Applicant gave up on his recovery and abused cocaine and heroin in August/September 2000, and associated with persons reputed to be in the "Mexican mafia."

Applicant returned to AA in September 2000 when he feared his behavior could lead even to his death, although he stopped attending AA in July 2004. As of September 2004, he was pursuing recovery solely through the Christian men's group led by his stepfather, who is apparently a drug and alcohol counselor. Certainly, a spiritual-based group may be a viable alternative to AA, and his decision to focus on this men's group is reasonable where his present cravings are not for drugs or alcohol but are sexual. His present abstinence is the longest by a few months since he began using illegal

drugs. Yet, the employment for which Applicant seeks the clearance would require travel two out of every three weeks. Applicant expressed a credible intent to contact recovery groups, or in the alternative AA, when away on business. In the past he has done so, on average every other business trip, but this job would require him to be away even more frequently. Applicant's former supervisors speak highly of his integrity and honesty and Applicant did not allow his use of drugs to negatively affect his work performance in the past. However, in light of his admitted ongoing struggles with sexual urges, his history of illegal drug use involving prostitutes, and the uncertainty of his future with respect to his home-base and his expected business travel, I am unable to conclude that there is little, if any, risk of future drug abuse. Accordingly, adverse findings are returned as to those subparagraphs reflecting illegal drug involvement (1.a., 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m.). Subparagraphs 1.e. and 1.n. are resolved in his favor as participation in recovery groups is viewed positively.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Applicant used heroin seven or eight times total.